



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 76 and 161

[Docket No. USCG-2021-0048]

Enforcement Discretion Regarding Carriage of Approved Fire Detection Systems

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement discretion.

SUMMARY: The Coast Guard announces that it will exercise its authority to suspend and grant exemptions from certain equipment carriage regulations during a period when compliance appears to be impossible. Specifically, the Coast Guard believes that between July 22, 2021, and July 22, 2022, there may be no approved fire detection systems available for purchase for certain vessels that need to install or replace those systems. For enforcement purposes, existing approved fire detection systems that were approved on July 21, 2021, will be treated as approved until July 22, 2022.

DATES: The enforcement discretion described will be exercised between July 22, 2021, and July 22, 2022.

FOR FURTHER INFORMATION CONTACT: For information about this document e-mail Ms. Brandi Baldwin at TypeApproval@uscg.mil.

SUPPLEMENTARY INFORMATION:

Discussion

Due to a change in the standards for smoke detectors the Coast Guard is extending, by one year, the validity of fire detection systems approved before July 22, 2017, to comply with new requirements under 46 CFR 161.002-4(b) and (c), as well as

the application date for vessel owners to comply with new requirements according to 46 CFR 76.27-1.

In July 2016, the Coast Guard issued new regulations for fire detection systems. Title 46 CFR 76.27-5(a) requires that detectors and other notifying devices must be of approved types. In addition, regulations at 46 CFR 161.002-4 require all fire detection systems to meet the applicable standards incorporated by reference in § 161.002-1 and in 46 CFR subchapter J (Electrical Engineering) of chapter I in order to be approved. That same section states that detection system approvals issued before July 22, 2017, will remain valid until July 22, 2021.

When the Coast Guard put in place the 2021 end date for approvals, we believed manufacturers would seek approval under new regulations issued in July 2016. However, we no longer expect that to occur by July 2021 because of a new industry consensus standard that will be effective industry-wide in June 2021. Smoke detectors must be listed by an OSHA National Recognized Testing Laboratory (NRTL) to ANSI/UL 268, Standard for Smoke Detectors for Fire Alarm Systems, and then meet the environmental standards in IEC 60092-504. The new, 8th edition of UL 268 for listing smoke detectors was scheduled to become effective May 29, 2020. However, because industry is struggling to develop smoke detectors complying with the new standard, the effective date was moved to June 30, 2021. This is only 22 days before our deadline of July 22, 2021, in CFR 161.002-4(b).

Further complicating the availability of approved detectors is the fact that it is not practical for a manufacturer to test a new design to the environmental standards in IEC 60092-504 prior to meeting UL 268 as UL 268 controls the design.

As of March 2021, we do not have any type approvals for fire detection equipment that will not expire on July 22, 2021. Moreover, it is unreasonable to expect that there will be any new type approved fire detection equipment before that date

because the time for manufacturers to obtain type approval after listing by an NRTL is estimated to be nine months. This is based on four to six months for testing to IEC 60092-54, assuming a device passes the first time, and then an estimated ninety days to submit and receive type approval. Thus, a one-year extension provides a three-month buffer until we can reasonably expect new, type approved fire detection equipment to be available.

Under 46 U.S.C. 3306(e) the Secretary has the authority to suspend or grant exemptions from the requirements of a regulation prescribed under that section related to lifesaving and firefighting equipment, when the Secretary finds it in the public interest to do so. The Secretary has delegated that authority to the Commandant, and both 46 CFR 161.002-4 and 46 CFR 76.27-5 were promulgated under 46 U.S.C. 3306. The Coast Guard finds it is in the public interest to avoid placing vessel operators in an impossible position. Therefore, it is the Coast Guard's position that suspending enforcement of the requirement on the public gives manufacturers more time to produce fire detection systems that meet approval standards so that when enforcement resumes on July 22, 2022, there is a product on the market that meets the regulatory requirement that the public can purchase.

The carriage requirements in 46 CFR 76.27-5 are for passenger vessels. However, regulatory provisions for other vessels reference part 76 for their own fire detection system carriage requirements or refer directly to 161.002. Therefore, the suspension and exemption described in this document applies to vessels regulated under 46 CFR Chapter I, Subchapters C, H, I, I-A, K, L, M, T, and U. These include all passenger vessels, commercial fishing vessels, offshore supply vessels, mobile offshoring drilling units, towing vessels, oceanographic research vessels, cargo vessels and other miscellaneous vessels.

This notice is a statement of agency policy, not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(3)(A). Even if this policy were subject to the public participation provisions of the APA, prior notice and comment is impracticable because of the short time available for public input prior to approvals expiring in July 2021. 5 U.S.C. 553(b)(B) and (d)(3). The Coast Guard therefore finds good cause, under the APA, to issue this statement of policy without prior public comment and without a delayed effective date.

If the situation changes and approved systems become available while this enforcement discretion is in place, the Coast Guard may discontinue its policy. In that situation, the Coast Guard would issue another notice in the Federal Register, at least 30 days before enforcement would resume.

This notice is issued under authority of 46 U.S.C. 3306, 4305, and 5 U.S.C. 552(a).

Dated: April 19, 2021

J. G. Lantz,

Director of Commercial Regulations and Standards

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